

*FILED  
IN CLERKS OFFICE**2005 FEB -2 P 3:49*UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSU.S. DISTRICT COUR;  
DISTRICT OF MASS.PUTNAM, LLC (d/b/a PUTNAM  
INVESTMENTS),

----- X 05 10211 RCL

Plaintiff,

: Civil Action  
No.

v.

SPEEDTRADER HOLDING CORP.,  
SPEEDTRADER.COM INC., PUTNAM  
DIRECT LLC, and PUTNAM  
FINANCIAL INC.,

Defendants.

*MBS  
MAGISTRATE JUDGE*

RECEIPT #	<u></u>
AMOUNT \$	<u>150.00</u>
SUMMONS ISSUED	<u>4</u>
LOCAL RULE 4.1	<u>-</u>
WAIVER FORM	<u>-</u>
MCF ISSUED	<u>-</u>
BY DPTY. CLK.	<u>M.P.</u>
DATE	<u>2/1/05</u>

**COMPLAINT FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF, DAMAGES, COSTS, AND ATTORNEY'S FEES**

Plaintiff Putnam, LLC (d/b/a Putnam Investments) ("Putnam"), for its Complaint against defendants SpeedTrader Holding Corp., SpeedTrader.com Inc., Putnam Direct LLC, and Putnam Financial Inc. (collectively "SpeedTrader"), alleges upon personal knowledge with respect to itself and its own acts, and upon information and belief as to all other matters, as follows:

**NATURE OF THE CASE**

1. This action is based upon the willful attempts of SpeedTrader to profit from misappropriating, infringing, and diluting Putnam's strong, very well-known, and highly valuable PUTNAM family of service marks and trademarks. Putnam, which has continuously used PUTNAM and related marks in connection with a wide range of

financial, investment management, retirement and related services since 1937, recently discovered that SpeedTrader has commenced using the names and marks PUTNAM DIRECT and PUTNAM FINANCIAL, as well as the domain names PutnamDirect.com and PutnamFinancial.com, in connection with SpeedTrader's direct access online brokerage and related services. SpeedTrader's unauthorized uses of the PUTNAM mark have caused, and if not preliminarily and permanently enjoined likely will continue to cause, confusion, mistake and deception, and dilution of the distinctive quality and value of Putnam's valuable PUTNAM family of marks.

#### PARTIES

2. Plaintiff Putnam is a Delaware limited liability corporation with its principal place of business at One Post Office Square, Boston, Massachusetts.

3. Defendant SpeedTrader Holding Corp. is incorporated under the laws of the State of New York and has its principal place of business in Mahopac, New York.

4. Defendant Speedtrader.com Inc. is incorporated under the laws of the State of New York and has its principal place of business in Mahopac, New York.

5. Defendant Putnam Direct LLC is incorporated under the laws of the State of New York and has its principal place of business in Carmel, New York.

6. Defendant Putnam Financial Inc. is incorporated under the laws of the State of New York, has its principal place of business in Mahopac, New York, and is a successor in interest to SpeedTrader Holding Corp.

**JURISDICTION AND VENUE**

7. The Court has jurisdiction over the federal claims under 15 U.S.C. § 1121 (trademarks) and 28 U.S.C. §§ 1331 (federal question), 1332 (diversity of citizenship), and 1338(a) (trademarks and unfair competition). The Court has jurisdiction over the state law claims under 28 U.S.C. §§ 1338(b) (joinder) and 1367 (supplemental jurisdiction).

8. Venue is proper in this District under 28 U.S.C. § 1391 because SpeedTrader is licensed in and solicits, transacts, and is doing business within the Commonwealth of Massachusetts and within this District, and therefore is subject to personal jurisdiction in this District.

**FACTS COMMON TO ALL CLAIMS**

**The Fame of the Putnam Marks**

9. Putnam has used the PUTNAM mark continuously in the marketing of financial services since 1937. Today, Putnam has approximately \$213 billion in assets under management, nearly 300 institutional clients, and over 12 million shareholders and retirement plan participants. Putnam offers over 100 mutual funds as well as retirement products such as IRAs and 401(k)s, 529 accounts, and variable annuities and other insurance products.

10. During the course of Putnam's long-time and continuous use of the PUTNAM mark, it has developed a broad family of PUTNAM marks in conjunction with the growth of its business. As a result, today the PUTNAM mark and Putnam's related family of PUTNAM marks are very well known for a wide range of financial services. To wit, the family of PUTNAM service marks and trademarks now includes such marks as

PUTNAM INVESTMENTS, PUTNAM MUTUAL FUNDS, MY PUTNAM, PUTNAM ADVISOR, PUTNAM MANAGEMENT, and PUTNAM BROKER (collectively the "Putnam Marks").

11. Putnam also owns a family of PUTNAM domain names, including such domain names as Putnam.com, PutnamInvestments.com, MyPutnam.com, PutnamAdvisor.com, PutnamBroker.com, PutnamMutualFunds.com, PutnamFunds.com, and PutnamServices.com (the "Putnam Domain Names").

12. Putnam, its affiliates, and its licensees offer under the family of Putnam Marks and Putnam Domain Names an extensive range of financial, investment management, retirement and related services in all of the traditional channels of trade in which such services are offered, including via the Internet.

13. Long before the acts herein complained of, the PUTNAM mark and the rest of the family of Putnam Marks have, through extensive advertising, promotion, and the substantial sales of services in this District and throughout the United States under these marks, become famous and associated by the public with Putnam.

14. Putnam invests substantial sums marketing the Putnam Marks and the Putnam Domain Names through popular and financial media, on the Internet, through third-party brokers and other marketing avenues. Indeed, in the last three years alone, Putnam has spent over \$90 million marketing the goods and services it provides under the Putnam Marks.

15. The Putnam Marks and Putnam Domain Names represent enormous good will that belongs exclusively to Putnam. Accordingly, the Putnam

Marks, and each of the distinctive marks comprising that family, as well as the Putnam Domain Names, are extremely valuable assets of PUTNAM.

**SpeedTrader's Unlawful Activities**

16. SpeedTrader recently commenced using the names and marks PUTNAM DIRECT and PUTNAM FINANCIAL (the "Infringing Marks"), as well as the domain names PutnamDirect.com and PutnamFinancial.com (the "Infringing Domain Names"), in connection with SpeedTrader's direct access online brokerage and related services.

17. The Infringing Marks and the Infringing Domain Names appropriate and feature Putnam's famous PUTNAM mark.

18. SpeedTrader adopted and began using the Infringing Marks and Infringing Domain Names without the knowledge, authorization, or consent of Putnam.

19. SpeedTrader adopted and began using the Infringing Marks and Domain Names with full awareness of the enormous good will that Putnam has developed in the Putnam Marks, and with an intent to profit or otherwise gain from the good will and reputation of such marks.

**Irreparable Harm To Putnam**

20. Speed Trader's use of the Infringing Mark and the Infringing Domain Name has caused, and likely will continue to cause, customer and consumer confusion, as customers and potential customers encountering the Infringing Marks and the Infringing Domain Names have believed, and are likely to continue to believe, that SpeedTrader and/or its services are affiliated with or endorsed by Putnam, its affiliates, or its licensees.

21. Speed Trader's use of the Infringing Marks and the Infringing Domain Names has caused and is likely to continue to cause confusion among brokers and financial advisors, who constitute an important sales channel for Putnam products and services, in that brokers and financial advisors who have encountered the Infringing Mark and the infringing Domain Name have believed, and are likely to continue to believe, that defendant and/or its services are affiliated with or endorsed by Putnam or its affiliates.

22. SpeedTrader's use of the Infringing Marks and Domain Names has diluted and likely will continue to dilute the strength of Putnam's PUTNAM mark and the other members of the family of Putnam Marks, in that SpeedTrader's use of the Infringing Marks has blurred the considerable source-identifying powers and/or tarnished the extraordinary reputation of Putnam and the Putnam Marks.

23. SpeedTrader's acts are causing Putnam irreparable injury for which Putnam has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF**  
**(Unfair Competition And False Designation Of Origin  
Under Section 43(a) Of The Lanham Act)**

24. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 23 of this Complaint.

25. SpeedTrader's use of the Infringing Mark and the Infringing Domain Name violates Putnam's rights in the Putnam Marks in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

26. SpeedTrader's use of the Infringing Marks and the Infringing Domain Name constitutes a false designation of origin in commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

27. Putnam has suffered and will continue to suffer irreparable harm as a result of such violations of law for which there is no adequate remedy at law.

**SECOND CLAIM FOR RELIEF**  
**(Service Mark Dilution Under  
Section 43(c) Of The Lanham Act)**

28. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 27 of this Complaint.

29. Putnam's PUTNAM mark and the remainder of its family of Putnam Marks are distinctive of Putnam's services, and are famous as a result of Putnam's extensive advertising, promotion, use, sale, charitable contributions, and offering of services under the Putnam mark and the rest of the family of Putnam Marks, and their widespread recognition by the relevant consuming public and their association with Putnam.

30. SpeedTrader's use of the Infringing Marks and the Infringing Domain Name began after Putnam's PUTNAM mark and the remainder family of Putnam Marks became famous.

31. SpeedTrader's use of the Infringing Marks and the Infringing Domain Name has diluted and likely will continue to dilute the distinctive quality and value of Putnam's PUTNAM mark and the remainder of the family of Putnam Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

32. Putnam has suffered and will continue to suffer irreparable harm as a result of such violations of law for which there is no adequate remedy at law.

**THIRD CLAIM FOR RELIEF**  
**(Cybersquatting Under Section  
43(d) Of The Lanham Act)**

33. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 32 of this Complaint.

34. SpeedTrader's conduct complained of herein constitutes a violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

35. SpeedTrader's registration and use of the Infringing Domain Name was undertaken in bad faith with the intent to profit from Putnam's PUTNAM mark and the remainder of Putnam's family of Putnam Marks.

36. Putnam has suffered and will continue to suffer irreparable harm as a result of such violations of law for which there is no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**  
**(Service Mark Infringement  
Under Mass. GEN. L. CH. 110B)**

37. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 36 of this Complaint.

38. SpeedTrader's use of the Infringing Marks and the Infringing Domain Name have confused and likely will continue to cause confusion with Putnam's PUTNAM mark and the remainder of Putnam's family of Putnam Marks, thereby constitutes service mark infringement in violation of Mass. Gen. L. C. 110B.

39. Putnam has suffered and will continue to suffer irreparable harm as a result of such violations of law for which there is no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF**  
**(Dilution Under Mass. Gen. L. C. 110B)**

40. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 39 of this Complaint.

41. SpeedTrader's use of the Infringing Marks and the Infringing Domain Name have diluted and likely will continue to dilute the distinctive nature and quality of Putnam's PUTNAM mark and the remainder of Putnam's family of Putnam Marks in violation of Mass. Gen. L. C. 110B.

42. Putnam has suffered and will continue to suffer irreparable harm as a result of such violations of law for which there is no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF**  
**(Common Law Trademark Infringement)**

43. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 42 of this Complaint.

44. SpeedTrader's use of the Infringing Marks and the Infringing Domain Name have confused and likely will continue to cause confusion with Putnam's PUTNAM mark and the remainder of Putnam's family of Putnam Marks, thereby constituting trademark infringement in violation of the common law of the Commonwealth of Massachusetts.

45. Putnam has suffered and will continue to suffer irreparable harm as a result of such violations of law for which there is no adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF**  
**(Common Law Unfair Competition)**

46. Putnam hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 45 of this Complaint.

47. SpeedTrader has violated the principles of the common law of unfair competition by trading on the good will of Putnam, competing unfairly, and by, among other things, creating a false association between SpeedTrader and Putnam.

48. The foregoing acts of SpeedTrader constitute unfair competition under the common law of the Commonwealth of Massachusetts.

49. Putnam has suffered and will continue to suffer irreparable harm as a result of such unfair competition for which there is no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff Putnam prays that the Court:

A. Preliminarily and permanently enjoin SpeedTrader, its agents, servants, directors, principals, officers, employees, successors, assigns, and all those acting under its control or the control of its subsidiaries, affiliates or divisions and/or on its behalf and/or in concert, from using the name and mark PUTNAM alone or in combination with any other words, phrases and/or designs, including without limitation, the "PutnamDirect.com" and "PutnamFinancial.com" domain names and any other domain name containing the term "Putnam" for and/or in connection with an Internet web site, for electronic mail, or for any other purpose, and from otherwise infringing and diluting the distinctive quality of Putnam's PUTNAM mark or any of the rest of the famous family of Putnam Marks;

B. Order that SpeedTrader transfer control over the "PutnamDirect.com" and "PutnamFinancial.com" domain name and any other domain name containing the term "Putnam" to Putnam, and cooperate as is necessary to ensure such transfer is quickly and fully effected;

C. Order that SpeedTrader cease operating business under the name "Putnam Direct, Inc." and "Putnam Financial, Inc." or any other name containing the term "Putnam", or any other name confusingly similar thereto;

D. Direct SpeedTrader or their attorneys to file with this Court and serve upon Putnam's counsel within ten (10) days of entry of Judgment a report in writing under oath setting forth in detail the manner and form in which SpeedTrader has complied with the requirements of the Court's Judgment;

E. Order that Putnam be awarded:

- (1) All of SpeedTrader's profits, gains, and advantages derived from SpeedTrader's unauthorized appropriation of Putnam's PUTNAM mark as part of SpeedTrader's name to designate SpeedTrader's products and services;
- (2) Statutory damages pursuant to the Lanham Act; and
- (3) All of Putnam's costs in this action, including Putnam's reasonable attorneys' fees and expenses;

F. Order that Putnam be awarded enhanced damages under the Lanham Act and Mass. Gen. L. 110B in an amount not to exceed three times actual damages; and

G. Order that Putnam be awarded such other and further relief as the Court deems just and proper.

Dated: February 2, 2005  
Boston, Massachusetts

Respectfully submitted,

  
James R. Carroll (BBO #554426)  
SKADDEN, ARPS, SLATE,  
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Counsel for Plaintiff Putnam, LLC



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED

CLERKS OFFICE

1. Title of case (name of first party on each side only) Putnam, LLC v. SpeedTrader Holding Corp.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil code or local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

U.S. DISTRICT COURT  
DISTRICT OF MASS.\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases

05 10211 RCL

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO 

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO 

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO 

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES  NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division  Central Division  Western Division 

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division 

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO 

(PLEASE TYPE OR PRINT)

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